

Count II

34. Complainant incorporates paragraphs 1 through 28 of this complaint, as if set forth in this paragraph.

35. During the April 7, 1999 inspection, U.S. EPA conducted observations of the opacity of the emissions from the Belt 1 to Belt 2 Transfer Point at the Specialty Products Plant, in accordance with the procedures specified in 326 IAC 5-1-4.

36. U.S. EPA calculated the opacity readings it collected into the following six-minute averages: 49.8%, 45.6%, 11.8%, 17.5%, and 37.1%.

37. Based on the April 7, 1999 opacity readings, U.S. EPA has determined that Rogers discharged visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings from the Belt 1 to Belt 2 Transfer Point.

38. Rogers' discharge from the Belt 1 to Belt 2 Transfer Point of visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings constitutes a violation of 326 IAC 5-1 and of the Act.

Count III

39. Complainant incorporates paragraphs 1 through 28 of this complaint, as if set forth in this paragraph.

40. During the April 7, 1999 inspection, U.S. EPA conducted observations of the opacity of the emissions from the Drier Baghouse Stack at the Specialty Products Plant, in accordance with the procedures specified in 326 IAC 5-1-4.

41. U.S. EPA calculated the opacity readings it collected

into the following six-minute averages: 47.3%, 36.5%, 4.4%, 12.3%, and 3.3%.

42. Based on the April 7, 1999 opacity readings, U.S. EPA has determined that Rogers discharged visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings from the Drier Baghouse Stack.

43. Rogers' discharge from the Drier Baghouse Stack of visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings constitutes a violation of 326 IAC 5-1 and of the Act.

Count IV

44. Complainant incorporates paragraphs 1 through 28 of this complaint, as if set forth in this paragraph.

45. During the April 7, 1999 inspection, U.S. EPA conducted observations of the opacity of the emissions from the Tail of 3 North Transfer Point at the Crushed Stone Plant, in accordance with the procedures specified in 326 IAC 5-1-4.

46. U.S. EPA calculated the opacity readings it collected into the following six-minute averages: 31.3%, 44.2%, 45.6%, 49.8%, and 55.6%.

47. Based on the April 7, 1999 opacity readings, U.S. EPA has determined that Rogers discharged visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings from the Tail of 3 North Transfer Point.

48. Rogers' discharge from the Tail of 3 North Transfer Point of visible emissions into the atmosphere that exhibited

greater than 40 percent opacity in 24 consecutive readings constitutes a violation of 326 IAC 5-1 and of the Act.

Count V

49. Complainant incorporates paragraphs 1 through 28 of this complaint, as if set forth in this paragraph.

50. Rogers began operation of the 50# Sack Bagger, a bagging operation which is a subject facility under 40 C.F.R. § 60.670, on April 27, 1999.

51. 40 C.F.R. § 60.672 (b) requires that on and after the sixtieth day after achieving the maximum production rate at which the 50# Sack Bagger will be operated, but not later than 180 days after April 27, 1999, the initial startup date, the affected source will be tested as required under 40 C.F.R. § 60.11.

52. Based on information submitted by Rogers and received by U.S. EPA on February 24, 2000, U.S. EPA has determined that Rogers had not yet conducted the required performance testing on the 50# Sack Bagger.

53. Rogers' failure to conduct a performance test on the 50# Sack Bagger within 180 days of startup constitutes a violation of 40 C.F.R. § 60.672(b) and of the Act.

Proposed Civil Penalty

54. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

55. Based upon an evaluation of the facts alleged in this

complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a **civil penalty** against Respondent of **\$101,750**. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy), Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy dated January 17, 1992, and Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty inflation rule (Pursuant to the Debt Collection Improvement Act of 1996) dated May 9, 1997. Enclosed with this complaint is a copy of the penalty policy.

56. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

57. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

58. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

59. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Joanna S. Glowacki to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Glowacki at (312) 353-3757. Ms. Glowacki's address is:

Joanna S. Glowacki (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

60. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent